



U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE

**I. ADMINISTRATIVE INFORMATION**

Completion Date of Approved Jurisdictional Determination (AJD): December 04, 2020

ORM Number: MVP-2020-01733-EJW

Associated JDs: N/A

Review Area Location<sup>1</sup>:

State/Territory: MN City: Albertville County/Parish/Borough: Wright County

Center Coordinates of Review Area: Latitude 45.226326 Longitude -93.657958

**II. FINDINGS**

**A. Summary:** Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in section II.B).
- ☐ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in section II.D).

**B. Rivers and Harbors Act of 1899 Section 10 (§ 10)<sup>2</sup>**

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A	N/A	N/A	N/A

**C. Clean Water Act Section 404**

Territorial Seas and Traditional Navigable Waters ((a)(1) waters)<sup>3</sup>

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A	N/A	N/A	N/A

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A	N/A	N/A	N/A

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A	N/A	N/A	N/A

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A	N/A	N/A	N/A

<sup>1</sup> Map(s)/Figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12))<sup>4</sup>:

Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Ephemeral Drainageway	300 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The delineation report submitted by the applicant describes Ephemeral Drainageway as an ephemeral drainageway with parabolic unvegetated/scoured bottom, with no water present at the time of delineation. The NWI map marked the area where the drainageway is located as wetland and aerial imagery from 1991 show a defined wet signature in the location of the drainageway. This indicates that the drainageway was not constructed in uplands. The NHD map included in the delineation does not show the drainageway, though the USGS topographic map did. The Wetland Delineation Precipitation Data Retrieval tool included in the delineation report scored the site as wet for the three prior month's precipitation data and the Antecedent Precipitation Tool (APT) determined the location to be wetter than normal during the delineation. The APT also found the rainfall to be within the 30-year normal range. This data, in addition to the lack of surface water found during the site visit indicates that surface water does not flow in the drainageway more than in direct response to precipitation. The NWPR defines ephemeral as surface water flowing or pooling only in direct response to precipitation, supporting that the drainageway is ephemeral. The NWPR states that a tributary must be perennial or intermittent in a typical year to be an (a)(2) water. Therefore, Ephemeral Drainageway does not meet the definition of an (a)(2) water and is not a jurisdictional water of the US.

**III. SUPPORTING INFORMATION**

**A. Select/enter all resources** that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

- ☒ Information submitted by, or on behalf of, the applicant/consultant: *50<sup>th</sup> Street NE Parcel Wetland Delineation Report (September 14, 2020)*  
This information (is) sufficient for purposes of this AJD.  
Rationale: *The delineation that was submitted used the Wetland Delineation Precipitation Data Retrieval tool from the Minnesota Climatology Office (2015) to compare precipitation during three months prior to the September 10, 2020 site visit, but the Antecedent Precipitation Tool was also utilized as well as aerial photography and the NWI to determine if the drainageway was constructed in uplands.*
- ☐ Data sheets prepared by the Corps: *Title(s) and/or date(s).*
- ☒ Photographs: *(aerial) Google Earth (1991-2020)*

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- \_\_\_ Corps Site visit(s) conducted on: *Date(s)*.
- \_\_\_ Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s)*.
- ☒ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- \_\_\_ USDA NRCS Soil Survey:
- ☒ USFWS NWI maps: National Wetlands Inventory
- ☒ USGS topographic maps: 1:24K Saint Michael

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
USGS Sources	National Hydrography Dataset
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

- B. Typical year assessment(s):** The Antecedent Precipitation Tool was utilized to monitor precipitation conditions for the location on the day the delineation was conducted (September 10, 2020). The 30-day rolling total for the location was within the 30-year normal range and a determination of “wetter than normal” was made based on the condition value sum.
- C. Additional comments to support AJD:** N/A

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